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UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,	:	15-CR-00252(RJD)
Plaintiff,	:	
	:	
	:	United States Courthouse
	:	Brooklyn, New York
-against-	:	
	:	
	:	Thursday, February 25, 2016
JUAN NAPOUT,	:	11:06 a.m.
Defendant.	:	

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TRANSCRIPT OF CRIMINAL CAUSE FOR HEARING  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

A P P E A R A N C E S

For the Government:      ROBERT L. CAPERS, ESQ.  
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Brooklyn, New York 11201  
BY: KRISTIN MACE, ESQ.  
Assistant U.S. Attorney

For the Defendant:      GREENBERG TRAURIG, LLP  
One International Place  
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BY: JOHN PAPPALARDO, ESQ.  
JACQUELINE BECERRA, ESQ.  
(telephonically)

and

PINERA-VAZQUEZ LAW FIRM  
1900 SW 3rd Avenue  
Miami, Florida 33129  
BY: SILVIA PINERA-VAZQUEZ, ESQ.

*Proceedings*

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4 Proceedings recorded by mechanical stenography; transcript  
produced by Computer-Assisted Transcription.

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6 (Defendant present telephonically.)

7 THE COURTROOM DEPUTY: Criminal cause for bond  
8 modification hearing, United States versus Juan Ángel Napout,  
9 case number 15-CR-00252. Please state your appearances for  
10 the record.

11 MS. MACE: Good morning, Your Honor, for the United  
12 States, Kristin Mace.

13 THE COURT: Good morning.

14 PRETRIAL OFFICER ILARIA: Good morning, Your Honor,  
15 Officer Michael Ilaria from Pretrial Services, I-L-A-R-I-A.

16 THE COURT: Good morning.

17 MR. PAPPALARDO: Good morning, Your Honor, John  
18 Pappalardo from Greenberg Traurig.

19 MS. PINERA-VAZQUEZ: And Silvia Pinera-Vazquez on  
20 behalf of Mr. Napout who is present through the use of the  
21 audio in Miami.

22 THE COURT: Good morning.

23 MR. PAPPALARDO: Also with Jacqueline Becerra of  
24 Greenberg Traurig.

25 THE COURT: Great. Mr. Napout, can you hear me?

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1 THE DEFENDANT (telephonically): Yes, yes, I can.

2 THE COURT: Good.

3 MS. BECERRA (telephonically): We can hear you, Your  
4 Honor.

5 THE COURT: And I know that you have waived your  
6 appearance here in person today for financial reasons and  
7 other reasons. Are you comfortable appearing by telephone?

8 THE DEFENDANT: Yes, Your Honor, I am. I am, Your  
9 Honor.

10 THE COURT: Okay, all right. So it might make sense  
11 just to get a report from Pretrial Services before we go  
12 anywhere. Take your drink, relax.

13 PRETRIAL OFFICER ILARIA: Thank you, Your Honor.  
14 Just briefly, so far the defendant's been monitored, I  
15 believe, for approximately a month or two. So far we have  
16 no --

17 MS. PINERA-VAZQUEZ: Three.

18 PRETRIAL OFFICER ILARIA: Three months, I apologize.  
19 We have had no significant compliance issues. The case is  
20 being supervised by an officer in the Southern District of  
21 Florida where the defendant is living. We have had e-mail  
22 contact with that officer and we have gotten that report from  
23 her that there has been no issues.

24 We are today recommending that the conditions stay  
25 the same. There is no significant reason why those conditions

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1 need to change. I know there is going to be some discussion  
2 about modifications, but our position as it is in the bail  
3 report remains the same, that he remain on bail with the  
4 conditions that have been set in place and the bond that has  
5 been set in place.

6 We would also just add someone complying is not by  
7 itself a reason to modify changes. The Court and certainly  
8 Pretrial Services expects people to honor the agreement they  
9 made with the Court, so we don't necessarily give out cookies  
10 to people who have done well or complied with those conditions  
11 of bail.

12 THE COURT: And does Pretrial Services have some  
13 concerns which you will want to express later about modifying  
14 the conditions, or I take it there is a difference between  
15 taking no position on this application and stating that you  
16 believe the conditions that are present should stay in effect?

17 PRETRIAL OFFICER ILARIA: Yes, Your Honor, we do  
18 have concerns and those concerns were articulated in the bail  
19 report, the assessment of nonappearance and danger. We stand  
20 by those risk recommendations. We feel like the package that  
21 has been presented and accepted by the Court is suitable to  
22 address those risks.

23 The defendant is on GPS monitoring. He is on home  
24 detention. That condition does allow for certain activities  
25 with approval from Pretrial Services. And I think it's

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1 flexible enough to allow for whatever I suspect are medical  
2 issues that will be discussed today. I think it's flexible  
3 enough to allow for those within reason and the Court's  
4 approval, if necessary.

5 THE COURT: Okay. So that's the background to this  
6 application and we will hear the full application.

7 MS. PINERA-VAZQUEZ: I just want to address  
8 something related to the Pretrial Services officer.

9 THE COURT: Sure, if you are more comfortable  
10 sitting down.

11 MS. PINERA-VAZQUEZ: Thank you, Judge. I have  
12 primarily been in charge of the Miami angle speaking to August  
13 Serrano which is the local Pretrial Services officer. And her  
14 position was outlined in our motion for modification. And I  
15 don't want the Court to feel any that there is any sort of  
16 miscommunication.

17 I actually did speak with her again today and her  
18 position remains that the 24/7 monitoring along with the  
19 electronic ankle bracelet is duplicitous and there is no  
20 reason to have the 24/7 security if you are going to have the  
21 home detention and the curfew and the electronic monitor. She  
22 is on standby. I fully recognize as -- I'm sorry; what's your  
23 last name?

24 PROBATION OFFICER ILARIA: Ilaria.

25 MS. PINERA-VAZQUEZ: Mr. Ilaria just told me that

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1 they are the primary Pretrial Services supervisors. So really  
2 she's just a direct contact, the local Pretrial Services  
3 officer. But in the end, she's the one who has had contact  
4 with him. She is the one who has been able to see him on a  
5 weekly basis and dropped in. And her position as stated in  
6 there is it's duplicitous because it's unnecessary.

7 Also, the part of the video surveillance, the fact  
8 that he can't go in the entire building and has to stay in his  
9 room, those are all issues she's dealt with on a direct basis.  
10 So we would ask the Court to consider what her position is  
11 also as far as being the one who is actually monitoring him.

12 THE COURT: And she is available by phone, correct?

13 MS. PINERA-VAZQUEZ: She is, Your Honor.

14 THE COURT: Are you requesting we hear from her as  
15 well?

16 MS. PINERA-VAZQUEZ: Yes, if the Court would like to  
17 hear from her, that's fine.

18 PRETRIAL OFFICER ILARIA: Just to briefly touch on  
19 that just so it's clear, I did speak to counsel before we went  
20 on the record. They have been very nice and they now  
21 understand that those communications about proposed bail  
22 modifications should start here. It's an Eastern District of  
23 New York case. It's a Pretrial Services case. It's our bail  
24 report. It's our case.

25 The only reason that officer -- and she's a great

1 officer and she has a lot of experience -- is involved in the  
2 case is because this defendant lives in Florida. There is no  
3 other reason. So when we gave the case to her to supervise,  
4 it was a courtesy supervision request.

5 But any time counsel makes an application for bail  
6 modifications, those should start with the district that is  
7 the controlling district. That is us. So even though we  
8 appreciate the contact counsel has had with the officer, it is  
9 our office that makes the final decision or gives the position  
10 of Pretrial Services. So we certainly take into account what  
11 their experience has been directly with a defendant, but that  
12 is just one factor in our ultimate decision, whether we  
13 consent or object to an application.

14 I just also note that we have FIFA cases here. We  
15 have FIFA cases in other parts of the country. To my  
16 knowledge, there have been no significant modifications like  
17 the one will you hear today. These packages are substantial.  
18 They are very unique to Pretrial Services and I think even all  
19 the parties involved, and I believe the way this package was  
20 structured is addressing every possible need and whatever risk  
21 the Court felt was present.

22 THE COURT: Okay, thank you.

23 MS. MACE: Your Honor, if I might just make a  
24 proposal?

25 THE COURT: Sure.

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1 MS. MACE: With regard to Pretrial Services and the  
2 role, as Mr. Ilaria explained, Pretrial Services here has done  
3 the risk assessment and set it forth in the bail report. And  
4 so Ms. Serrano in Florida has supervised the defendant. And  
5 if there is a question or issue about his compliance with the  
6 terms of supervision and so forth, it may be appropriate to  
7 get her on the phone.

8 But I actually don't think that there will be a  
9 factual issue about that today. I think the question is the  
10 risk assessment and that has been performed by Mr. Ilaria and  
11 his office. So I would just propose we start there with the  
12 risk assessment. If there's a factual dispute about  
13 compliance with conditions, then it may make sense to reach  
14 out to Florida, but I don't foresee there will be one.

15 THE COURT: I understand that position, and the risk  
16 assessment comes from Pretrial Services here. I don't think  
17 there is an issue about compliance, from what I can tell. I  
18 think that, as Mr. Ilaria said, it sounds as though the  
19 compliance was expected. And so, complying with the terms and  
20 conditions doesn't mean that if one or two of those conditions  
21 were removed, the risk would increase.

22 The reason it might be useful, and I don't know yet,  
23 would be to understand how that 24/7 security works and if  
24 there are physical restrictions and limitations, I just heard  
25 from defendant's counsel, what that really means. And then we



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1 would factor that back into the risk assessment and see if  
2 there is any way to deal with the concerns. There may not be.

3 MS. MACE: And I'm prepared to speak from the  
4 government's perspective about the purpose of those various  
5 different conditions that are in place and why we think they  
6 are important and not duplicative.

7 THE COURT: Great.

8 MS. MACE: Maybe if we proceed through the arguments  
9 today, we will see if there is a factual question about how it  
10 actually operates.

11 THE COURT: Sure, okay.

12 MS. MACE: If that's acceptable to everybody.

13 MS. PINERA-VAZQUEZ: That's fine.

14 THE COURT: Mr. Pappalardo, did you want to start?

15 MR. PAPPALARDO: Yes, Your Honor. Thank you very  
16 much. And it's okay to sit down?

17 THE COURT: Absolutely. It's probably better.

18 MR. PAPPALARDO: Thank you. Your Honor, we filed  
19 this motion because we believe that the conditions that were  
20 imposed on December 15th and the manner in which they were  
21 imposed are both unnecessary and unwarranted. In addition, we  
22 believe that the amounts of bail are excessive and  
23 unreasonable.

24 The analysis stems from a historical perspective,  
25 and if the Court would indulge me briefly, Mr. Napout is a 57,

1 58-year-old man. He is an individual that is very different  
2 than most of the other defendants in the FIFA case. And I  
3 want to make this point clearly to the Court. He is a man who  
4 at the age of 50 retired. He was born independently wealthy.  
5 He went into football at or about the time he retired. He was  
6 the principal in a large import/export business in Paraguay.  
7 By the time he was 50, he had accumulated considerable assets,  
8 none of which, of course, are within the question of any  
9 indictments that came out in 2015.

10 Approximately -- well, let me fast-forward to the  
11 early part of 2015. Mr. Napout has four children. He has got  
12 three daughters and a son. He is still married to his first  
13 wife. They have an extremely close family unit. And at all  
14 times, whether in business or otherwise for football, when he  
15 traveled, he went back to his home in Paraguay.

16 His family is what defines his existence. It became  
17 clear that a passion of his was football. He became the head  
18 of the Paraguayan football club, and ultimately through a  
19 series of events became the president of CONMEBOL in a very  
20 quick fashion.

21 As president, he began to institute changes that  
22 were very clear from his assessment of what was going on  
23 there. And all of this occurred well before any hint of any  
24 government investigation. But let's fast-forward to June of  
25 2015. As the Court knows, there were a series of arrests in

1 Switzerland on May 27th of last year. Mr. Napout was not in  
2 that group. Based upon that, Mr. Napout sought advice. He  
3 hired my firm. He hired Ms. Pinera-Vazquez. We spoke to him.  
4 We wanted to find out what this was about. We began an  
5 internal investigation.

6 From the time we began that investigation, as  
7 somebody who was with the government for 20 years, I'm no  
8 stranger to how the government works. I picked up the phone.  
9 I spoke to Mr. Norris. I said to him, listen, I don't know  
10 what this is about, but I will find out. I want you to know  
11 two things. I want you to know that we represent Mr. Napout,  
12 number one, and number two, if there should ever come a time  
13 when you think you have enough information to charge him with  
14 a crime, please let me know. We will surrender him.

15 Now, obviously that is not something that the  
16 government has to agree with, but I did put them on notice  
17 that that was the case. In fact, we even discussed -- we even  
18 discussed at that time that Mr. Napout would be traveling, and  
19 he said that wouldn't be a problem. He also informed me in  
20 that conversation that Mr. Napout was a target of the  
21 investigation and with this knowledge -- we have that  
22 communication -- I called him again several weeks later as we  
23 were beginning the investigation and said to him, listen, we  
24 are beginning our internal review. We would like to, you  
25 know, maintain contact with you. And by the way, Mr. Napout

1 is traveling again.

2 He said look, I'm not going to discuss with you  
3 anymore about what Mr. Napout does in terms of his travel. If  
4 he travels, he travels. I'm not going to give you, you know,  
5 any notice of whether or not that's okay. And that's  
6 perfectly fine. So we began our internal investigation. We  
7 looked at all of Mr. Napout's bank records, which were  
8 considerable, around the world. We looked at his holdings.  
9 We obviously spoke to him.

10 At some point in time, we were getting to the point  
11 in the investigation where it became necessary to sit down  
12 with Mr. Napout in the United States. And in order to do so,  
13 we asked for and ultimately secured safe passage to the United  
14 States by agreement, by written agreement with the government,  
15 which had on it attached to it significant conditions of what  
16 Mr. Napout could, but most importantly what he couldn't, do.  
17 Mr. Napout was in complete conformity with those restrictions.  
18 He was here for the specified period of time. In fact, I  
19 think left a little bit earlier.

20 And we concluded that facet of the internal review  
21 that we were conducting. We were also conducting a review of  
22 what was going on in other parts of this case. On December  
23 1st, Your Honor, I spoke to the government. I said to them  
24 two things. I said, number one, I think we are at a point  
25 where we need to sit down and talk. I have information that I

1 think you would be interested in that I'm fairly certain you  
2 have no knowledge about that I'm happy to provide to you. And  
3 I also wanted to discuss with you the status of Mr. Napout.

4           During that conversation, I said to them, you know,  
5 I'm happy to set this up as quickly as can be done. I don't  
6 know if you want to wait until the end of the year because we  
7 are talking holidays and things of that nature. I knew there  
8 was a hearing in December that related to the larger case.  
9 And they said okay, we will get back to you.

10           On December 4th, three days later, Mr. Napout was  
11 arrested in Switzerland. And at that time I was there, I  
12 immediately secured Swiss counsel. And as soon as I could  
13 secure Swiss counsel, we waived extradition. We are the only  
14 defendant, Your Honor, in this case to immediately waive  
15 extradition. And the reason for that is consistent with the  
16 presentation that I made to the government in the beginning.  
17 Mr. Napout at all times wanted to address whatever concerns  
18 the government has. There was no issue about waiver of  
19 extradition. We waived. We had to wait a week or so to come  
20 back and we appeared before you on December 15th.

21           At that time, Your Honor, when I visited Mr. Napout  
22 in his holding cell, it was very, very clear to me that he was  
23 not of sound mind. It was very clear to me that he was, you  
24 know, he had medical conditions that were significant. He  
25 certainly had the ability to understand. He certainly wanted

1 to waive extradition which is what he always said and  
2 surrender to address the charges. But he was not in good  
3 shape.

4 I brought his attention -- I brought his condition,  
5 excuse me, to the attention of the government. I provided  
6 them with approximately ten years of medical records which  
7 supported that particular condition in an effort to get him  
8 back here in, you know, in a decent frame of mind.

9 At the time, we were also negotiating bail, although  
10 it really wasn't much of a negotiation. What we did was, we  
11 voluntarily provided to the government at our client's  
12 insistence, a list of all of his financial holdings in banks.  
13 We provided a spreadsheet to them which basically showed that  
14 he had approximately, in various bank accounts around the  
15 world, \$20 million in cash. And we indicated to them that we  
16 thought \$5 million would be appropriate to secure his  
17 presence.

18 And at all times they insisted on not negotiating.  
19 I said, look, it's \$20 million. That's the way it is. I will  
20 tell you, Your Honor, that it wasn't much of a negotiation,  
21 number one, and number two, we weren't in the position to  
22 negotiate. His medical condition and his state of mind were  
23 such that we made the decision to get him out of incarceration  
24 as quickly as possible so that he could get medical attention  
25 so that he could get on medication and he could be, you know,

1 he could begin to recover from this experience and address the  
2 situation and assist us to address the situation. We had to  
3 capitulate. I appeared before you and said yes to everything,  
4 okay, and that was solely for the purpose of getting him out  
5 of incarceration.

6 Now, since then, let me bring to the Court's  
7 attention some facts and circumstances that probably were not  
8 known at the time of the initial appearance. Number one,  
9 Mr. Napout has a home in Florida. He has lived in Florida for  
10 approximately, well, since the 1980s. He has been in this  
11 home for a while. The home is in a high-rise. He owns a  
12 floor in a high-rise on the beach south -- I'm sorry, north of  
13 Miami.

14 And it's in a very secure setting. The entire  
15 compound for this high-rise has electronic surveillance. It  
16 has cameras everywhere. You can't go and come. You can't  
17 even get into the garage without being monitored. You can't  
18 go from one place to another within the compound without  
19 running into a camera. Mr. Napout is there. He is there with  
20 his family, Your Honor. He is there --

21 THE COURT: When you say "his family," you mean his  
22 wife and daughters?

23 MR. PAPPALARDO: Yes, Your Honor, better. He is  
24 there. His wife has been with him in Florida since she  
25 appeared before you in court on December 15th, as well as his

1 daughter. He has two other daughters who have been there, and  
2 now they have decided to stay there with him. His son goes  
3 and comes, but is there a lot. He has made arrangements, Your  
4 Honor. He has an 84-year-old mother. He has made  
5 arrangements for her to come and stay. He has rented a place  
6 in the same building so that she could be with him. His  
7 entire family, essentially, Your Honor, is there. And they  
8 will be there until this matter is addressed with finality.

9 He has no place to go, Your Honor. He is a man,  
10 sure, he has property in Paraguay. I even said to the  
11 government, look, he's not a risk of flight. He wants to  
12 address these cases. I will sign whatever you want. I will  
13 waive extradition from Paraguay or any other country that you  
14 wish to designate in advance if you think he's a risk of  
15 flight.

16 They declined on that offer. I understand. By the  
17 way, I'm not beating up on the government here, Your Honor.  
18 What I'm saying is their position is, well, no, that can't  
19 happen because we have never seen it happen before. I say  
20 this to the Court, Your Honor, because it was a good-faith  
21 effort to attempt to address this. We want address these  
22 charges.

23 Let me talk a little bit about the charges. We have  
24 seen the superceding indictment. Mr. Napout, unlike most of  
25 the other defendants, is described in that indictment in a



1 fashion as though he is in a conspiracy, but there are no  
2 specific allegations. There is no specificity to those  
3 allegations, unlike other defendants who have, among other  
4 things, wire transfers into bank accounts, and things of that  
5 nature. There is no forfeiture count in the indictment as it  
6 relates to Mr. Napout.

7           The only thing that is in the indictment, Your  
8 Honor, is apparently, and I'm reading between the lines,  
9 apparently, there is an individual or more than one  
10 individual, I'm guessing a cooperating witness, who has every  
11 incentive to give the government what they want and to please  
12 the government not only for himself, but for his personal  
13 situation saying that somehow, Mr. Napout was in on something.

14           Mr. Napout, Your Honor, was a vice president of  
15 CONMEBOL in 2013. He became president of CONMEBOL in 2014.  
16 From the time he was a vice president, he made efforts to  
17 institute reforms within that institution in a meaningful way,  
18 which reforms are ongoing to this day. After the original  
19 arrests in May of 2015, in fact, before the original arrests  
20 in May of 2014, he was in the process of making these reforms  
21 in CONMEBOL.

22           Subsequent to the arrest, he hired a well-respected  
23 U.S. international firm, McDermott Will & Emery, who was down  
24 there and put into place very comprehensive, very robust  
25 controls, compliance programs, term limits and everything that

1 you would want to expect from an institution that was trying  
2 to promote transparency. And this occurred, Your Honor, his  
3 effort to do this occurred before there was any hint of  
4 knowing about what would then happen at the end of May.

5 The bottom line is, Your Honor, this is a man who  
6 wants to address these charges. I don't know what the  
7 government has for evidence. I'm sure they haven't completed  
8 their discovery. But what I do know is what is not in that  
9 indictment. And what is not in that indictment is any kind of  
10 meaningful electronic surveillance.

11 Yes, there is a quote there that Mr. Napout made on  
12 the public record talking about the Copa Centenario saying  
13 that North America and South America are one, so we should  
14 have this great tournament. And Mr. Napout was very  
15 instrumental in putting that together as president of  
16 CONMEBOL. It was in that capacity that he made that quote.

17 I await any evidence that the government may have,  
18 but we have having a hearing today, Your Honor, based upon  
19 what's before you. And what I suggest to you is, Your Honor,  
20 based upon all of these factors and everything that I have  
21 informed the Court, Mr. Napout is not a risk of flight. With  
22 all due respect to the government, with all due respect to  
23 Pretrial Services, where is he going to go? He is in Florida.  
24 His family is in Florida. That is what is important to him.  
25 He wants to address these charges. He has wanted to from the

1 beginning. He has waived extradition at the earliest possible  
2 time.

3 I have tried to interact with the government in an  
4 effort to deal with this. And he is on, at the moment, Your  
5 Honor, the most onerous bail of anybody in this case, okay.  
6 We have attached a spreadsheet. Oh, yeah, there are others,  
7 Your Honor, that have \$20 million in bail. Mr. Napout has  
8 \$20 million in cash. He doesn't have \$20 million from a  
9 corrupt company stock that he has put up along with, you know,  
10 \$5 million of property from other people like some other  
11 people who have \$20 million bails. He has \$20 million in  
12 cash. That cash, Your Honor, is what he has in terms of  
13 liquid assets. That cash is needed to defend himself. That  
14 cash is needed to support his family.

15 The bottom line is, Your Honor, we can parse through  
16 everybody's bail in this case. What I'm most concerned about  
17 and what I raised in the context of the motion is that the  
18 conditions that he is being held on, Your Honor, are impacting  
19 him. They are impacting him mentally. You have a report in  
20 front of you from a doctor. The report speaks for itself.

21 And I believe, Your Honor, that report supports what  
22 I am telling you. He is in a setting. He is in a compound.  
23 There is electronic surveillance there. He is on a bracelet.  
24 He doesn't need to spend \$75,000 for someone to sleep in the  
25 cabana so that they can look up at the things and say, well,

1 geez, I think he's in the apartment, you know, tonight. It's  
2 a waste of money, it's duplicitous and it's not warranted by  
3 what I have just informed the Court.

4 The bottom line, Your Honor, is this. In my view,  
5 the bail is excessive. The conditions are onerous and not  
6 required. He will come up. He will address the charges. He  
7 is anxious to do so in the context of this case. We are not  
8 going to sit back and wait for things to happen in this case,  
9 Your Honor. We will address these charges and we look forward  
10 to doing so.

11 MS. MACE: Thank you, Your Honor. Mr. Pappalardo  
12 has given a pretty expansive description of his view of the  
13 case, but I want to focus in on the specific issue before the  
14 Court right now, and I think it's risk of flight.

15 THE COURT: I think weight of the evidence would be  
16 useful, too.

17 MS. MACE: I will address that, as well. But as it  
18 fits into the determination of whether the defendant is a risk  
19 of flight and the extent of that risk. And so, I just note at  
20 the outset no one is seeking to remand the defendant. This is  
21 not a question of whether he should be in or out. It is a  
22 question of whether he is a risk of flight and how significant  
23 that risk is.

24 And I think, despite what is in the defense papers,  
25 I think everyone agrees or at least the government and

1 Pretrial agrees he is a risk of flight. And the task is to  
2 assess that risk, figure out how substantial it is and try to  
3 determine how to effectively mitigate the risk to a tolerable  
4 level. So once again, no one is seeking to have him remanded.  
5 It's how to figure out how to keep that risk manageable so he  
6 really has an incentive to be here and not to flee.

7 Now, Mr. Pappalardo referred to the chart that is  
8 attached. And I would submit to Your Honor that while that  
9 may give some broad context for the case, it is the task of  
10 the Court to look at individuals. And what I want to focus on  
11 are the factors that make Mr. Napout unique. And he is  
12 different than many of the other defendants. And he is a more  
13 substantial risk of flight. And I would encourage the Court  
14 to look at him individually and not simply do a comparison  
15 between other defendants because each person is different.

16 And I will talk about those factors, but first, I do  
17 want to make one comment about the references to the process  
18 that has taken place in the court thus far. In the  
19 defendant's papers, he said that the government unilaterally  
20 set an excessive bail amount and the Court was somehow  
21 unwilling or unavailable to conduct a bail hearing when he  
22 arrived and that's obvious not the case. The government can't  
23 unilaterally do anything.

24 THE COURT: Right.

25 MS. MACE: We spoke to -- I personally spoke to

1 Mr. Pappalardo and Mr. Napout's other three lawyers numerous  
2 times leading up to his arrival in the United States. And we  
3 did negotiate what led to a joint proposal to the Court, and  
4 the Court did conduct a bail hearing. We were there. It's on  
5 the docket.

6 And the parties were free to make whatever arguments  
7 they wanted. And the defendant could have argued for a lessor  
8 bond at that time. I'm not suggesting he's precluded from  
9 doing so now, but there was a bail hearing. And in the end,  
10 the parties decided to present a joint proposal, but that was  
11 not required. And so every appropriate process was afforded  
12 to the defendant, and I just wanted to make that point here  
13 clear.

14 And in our negotiations, I will say that I did stand  
15 firm on having a high or a large bond amount because of the  
16 defendant's enormous personal wealth. And so it's true that I  
17 articulated to the defense that I thought it needed to be a  
18 large bond that was substantially secured. We didn't say how  
19 much cash it needed to be. That ended up being a  
20 determination that the defense chose.

21 But we negotiated on many points. For example, the  
22 defense asked that Mr. Napout be afforded 90 minutes every day  
23 to go out and exercise, and we said fine. And many other  
24 issues like that they raised and we accommodated and jointly  
25 presented that to the Court.

1           They did ask me to consider a lower amount, and I  
2   just said frankly, I didn't think a lower amount was  
3   appropriate because of his total assets. And I think that is  
4   important. And this is a distinction between the other  
5   defendants, that you have to look at each person individually  
6   and how much money actually matters in a real sense and how  
7   much could they walk away from and maintain their lifestyle.

8           And here, before I get into the specifics of  
9   Mr. Napout's financial situation, I will just note the  
10   context, of course, is someone who is a citizen of another  
11   country. His family has joined him, but they are not required  
12   to be here and they could leave at any time and the government  
13   certainly couldn't prevent them from doing so. His life has  
14   been in Paraguay. His work has been there. Mr. Pappalardo  
15   said he lived in Miami for 20 years. I don't understand that  
16   to be the case. He has a \$3 million condo that he vacationed  
17   at, but I don't see that his primary residence is the United  
18   States.

19           MR. PAPPALARDO: It's not his primary residence,  
20   Your Honor. He comes periodically to the U.S., particularly,  
21   you know, during certain times of the year, as does his  
22   family.

23           THE COURT: Let me just ask a question since you  
24   raised the family issue.

25           MS. MACE: Yes.

1           THE COURT: The defense is relying a lot on the fact  
2 that the family has roots in Florida, that his family is  
3 there. Would surrendering the family's passports to Pretrial  
4 Services while they are there give the government some comfort  
5 on that issue? Is that something that the family would be  
6 willing to do, assuming that they could come back if they  
7 wanted to leave, they could get the passports, but Pretrial  
8 Services would know, et cetera, et cetera?

9           MR. PAPPALARDO: We could deal with monitoring their  
10 comings and goings in some fashion, Your Honor. That's not a  
11 problem. The issue, the whole point is the family is moving  
12 up here to deal with this while this is outstanding. And that  
13 is what they are doing, including his 84-year-old mother.

14           THE COURT: I understand that. And so the question  
15 that the government rightly raises is, well, what's to keep  
16 them from leaving with him at some point? And one thought  
17 that I had was perhaps, you know, restraining the passports or  
18 just depositing the passports might actually help.

19           MS. MACE: Your Honor, I don't believe the  
20 government could actually prevent their travel. And Your  
21 Honor said they have roots in Miami. That's my understanding.

22           THE COURT: Well, ties, ties. Ties can creates  
23 roots.

24           MS. MACE: Well, it's a property that they have  
25 enough money that they don't need to work now and they can



1 live together and join him. But if, for example, he fled,  
2 even if the rest of the family's passports were with Pretrial,  
3 Pretrial would have to give them back. The government cannot  
4 prevent them from travel.

5 THE COURT: They could consent.

6 MS. PINERA-VAZQUEZ: Judge, I can assure you that  
7 "Gadi" (ph), Napout's wife, in fact, we have discussed a  
8 potential third-party surety which I understand this district  
9 does. We are not familiar with it in Miami, but I talked to  
10 her about it because it was brought to my attention and she  
11 would be willing to do that also. And I'm sure, and  
12 Ms. Becerra is with Mr. Napout, but I'm sure that the family  
13 will be happy to turn in the passports.

14 And contrary to what Ms. Mace is saying, at least  
15 Pretrial Services would know when they are going back because  
16 they would have to go physically retrieve their passports. So  
17 that's not going to be a problem. If the Court would allow us  
18 to do that, that would be fine.

19 MS. MACE: Your Honor, knowing after the fact --

20 MS. PINERA-VAZQUEZ: Ms. Becerra --

21 MS. BECERRA: Your Honor, this is Jackie Becerra.  
22 I'm also counsel for Mr. Napout. I'm here with Mr. Napout and  
23 his wife, and one of his daughters is present. And they  
24 represented to me that they as well as the siblings would be  
25 willing to provide their passports to Pretrial Services while

1 they are in the United States so that if they were to leave  
2 again, that they would actually need to contact Pretrial  
3 Services to get their passports.

4 MS. MACE: My point, Your Honor, is contacting  
5 Pretrial Services to get your passport after the defendant has  
6 fled serves no purpose. Everyone would have to let them  
7 leave. They have no ties to the U.S. other than this condo,  
8 and his life is in Paraguay. And so, if he chose to flee, and  
9 I do want to say some more about the possible scenarios, but  
10 if he chose to flee, the fact that, you know, he fled on  
11 Sunday, and on Monday the family went to Pretrial and asked  
12 for their passports and then the government knew he was long  
13 gone, it would serve no purpose. So I don't think it protects  
14 against anything.

15 THE COURT: Again, I haven't researched this, but  
16 isn't there some agreement that they could make that they  
17 would not be able to retrieve their passports --

18 MS. PINERA-VAZQUEZ: Yes.

19 THE COURT: -- if he fled?

20 MS. MACE: Under what consequence, though?

21 MS. PINERA-VAZQUEZ: Contract.

22 THE COURT: They would have to stay in the States.

23 MS. MACE: I don't even know what their legal status  
24 is in the States. If they are on a visiting visa, I don't  
25 know, but I can't imagine the government could require a

1 foreign national who is not charged with any crime to not  
2 return to his country. I think that would cause an enormous  
3 national incident and we don't have the power to do that.

4 THE COURT: No, but if they consented, isn't that  
5 something they can consent to?

6 MS. MACE: I don't know they can and I don't know  
7 under what authority the government could enforce it.

8 THE COURT: Well --

9 MS. PINERA-VAZQUEZ: Your Honor, they could consent.  
10 I mean, obviously we waive -- defendants and parties waive  
11 rights that they have and are free to exercise all the time.  
12 And they consent to it, the third-party surety, the government  
13 has done this in the past and they would have enforcement  
14 powers over the wife and prevent the wife from leaving under  
15 the assumption that the client's going to flee which, of  
16 course, our position is he would never flee.

17 So the third-party surety, I think the government  
18 has done this in the past in several cases in this district,  
19 and they would certainly not be able to refrain the wife who  
20 has been with him, Your Honor, for 24/7 since the day he  
21 walked out of this courtroom. So she would certainly have to  
22 stay here, and that would assure the government whatever  
23 enforcement issues they believe they have, which they don't if  
24 we consent to a waiver of leaving the country if he flees.

25 THE COURT: It's just a question that --

1 MS. MACE: Yes, and I just do not believe that the  
2 U.S. Attorney's Office could somehow require the Department of  
3 Homeland Security to grant a visa or to require to let foreign  
4 nationals stay in the country or we could prevent her from  
5 leaving, whatever contract she signed. If she's unlawfully  
6 here, she would be deported anyways. And there would be  
7 nothing to prevent it. I just, I don't see that as  
8 substantially affecting anything. I think the reason is --

9 THE COURT: But is she lawfully here now?

10 MS. MACE: I don't know.

11 MR. PAPPALARDO: Of course they are, Judge.

12 MS. MACE: No, I just don't know. I assume she's on  
13 a visitor visa that will expire at some point in time. I  
14 don't know the answer, but I'm guessing she's not a citizen as  
15 they represented to us. And I do want to note when we were in  
16 our negotiations about the bond package, I expressed that it  
17 would be very, very helpful if there were some U.S. suretor,  
18 someone with some ties to the U.S. who could sign the bond,  
19 and they said they had nobody. They didn't have a business  
20 friend, anybody that could sign. There was not even a  
21 citizen, someone with substantial ties.

22 All they had was his wife and daughter were willing  
23 to come. And none of them, as I understood it, have any  
24 substantial ties other than this condo that they use  
25 periodically for their family. And so I asked for that

1 because I do think that that can make a huge difference. If  
2 you have someone in the U.S. who will be left with the  
3 consequences of a bond violation, then that can provide at  
4 least moral suasion and even important security in a more  
5 substantial way or tangible way.

6 But in this case, they said they didn't have that.  
7 And for that reason, I encouraged them to come up with a more  
8 secured bond, have a higher level of security for the bond  
9 amount, because there was no one in the U.S. to step forward  
10 for the defendant. And essentially, the lack of U.S. ties is  
11 something that's noted in the bail report and is something  
12 that we find very significant, that the defendant could flee.  
13 He could go to Paraguay. He has an enormous amount of wealth  
14 there and he could live very comfortably. And that creates a  
15 very different situation than many of the defendants in this  
16 case and it makes him a substantial flight risk.

17 THE COURT: But yes, I hear what you are saying and  
18 I have an open mind as to everything on both sides. But the  
19 fact that someone could flee doesn't necessarily mean that the  
20 person will flee. And that's the connection --

21 MS. MACE: Yes.

22 THE COURT: -- I'm waiting for.

23 MS. MACE: If I could get to my second sort of  
24 factor as I see it, there is the lack of U.S. ties and then  
25 there is his personal wealth. And I think this is the most

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30

1 significant factor, really creates -- makes him a higher risk  
2 of flight than many. And I will just pause for a moment.  
3 This is an area that Mr. Pappalardo has spoken generally about  
4 today, but I want to talk very specifically about it. And in  
5 the past he asked that not be done in public, so I will pause  
6 to see if there is any objection to me proceeding?

7 MR. PAPPALARDO: In what fashion?

8 THE COURT: Would you prefer to have a discussion of  
9 his personal wealth and assets --

10 MS. PINERA-VAZQUEZ: Sidebar?

11 THE COURT: -- as opposed to --

12 MR. PAPPALARDO: Could we do it at sidebar, Your  
13 Honor?

14 THE COURT: Sure.

15 (Continued in a sealed portion, pages 31-39.)  
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1 (In open court.)

2 THE COURT: All right. Is now the time to talk  
3 about that issue?

4 MS. MACE: That's fine, Your Honor. And it's  
5 something that I didn't understand from the defense's motion,  
6 either, because I was -- I believe that there was a provision  
7 passed by CONMEBOL that Napout's defense would be would paid  
8 for by CONMEBOL, but I'm sure Mr. Pappalardo will have more  
9 information about that.

10 MR. PAPPALARDO: I have plenty of information about  
11 that, Your Honor.

12 THE COURT: Okay.

13 MR. PAPPALARDO: His defense is not being paid by  
14 CONMEBOL. And as a matter of fact, when he was president of  
15 CONMEBOL, as the government well knows, efforts were made by  
16 others to have their defenses paid which were -- which did not  
17 occur and were specifically rejected by counsel at mine and  
18 others' direction, but particularly Mr. Napout's direction.

19 If we could go back to the point at sidebar, Your  
20 Honor, let me stress that the main reason here to ask the  
21 Court to revisit the issue of the entire bail package is to  
22 address the bail conditions. One of those conditions is the  
23 amount of money. There are many ways that the Court can  
24 address the amount of money. I mean, as I sit here, I think  
25 \$5 million is much more than what is needed. He has done

1 absolutely nothing in anything he has done, he was told he was  
2 a target in June. If he was going to leave, he could have  
3 left. He didn't.

4 THE COURT: I'm aware of all those arguments and you  
5 have expressed them well.

6 MR. PAPPALARD0: What I'm saying simply is this. Is  
7 there a risk of flight? We will concede a risk of flight  
8 under the circumstances. However, the question is whether or  
9 not \$5 million or something less than \$20 million in cash is  
10 more than adequate to address that risk of flight.

11 THE COURT: Right. But one of the concerns that you  
12 raised that I'm concerned about --

13 MR. PAPPALARD0: Yes.

14 THE COURT: -- on the Sixth Amendment issues is  
15 ability to fund a defense.

16 MR. PAPPALARD0: And my suggestion, Your Honor,  
17 would be to, if it would assist the Court, we could take the  
18 money back into the Greenberg's client funds account. That  
19 way the client doesn't have control over it. We do.

20 MS. PINERA-VAZQUEZ: Your Honor, if I could just  
21 address -- I'm sorry, John. Thank you. Yes, there is an  
22 issue because of the liquidity. He has no liquidity. And  
23 it's not only to fund his defense, but as the Court knows  
24 because we put in a motion, the 24/7 security is \$100 an hour,  
25 \$75,000 a month, which he is strapped.



1           And I don't want the Court to get the  
2     misunderstanding that nobody in the Napout family is working.  
3     They are working. They are sacrificing to be with their  
4     father here. The son is coming back and forth because he has  
5     to work in the family business. One of the daughters is  
6     pregnant. You had to have husbands. They are not flying  
7     around living on this money. This is a very, very delicate  
8     and difficult time for the family and they chose to stand by  
9     their father and help him go through this.

10           As far as the financial resources, \$75,000 a month,  
11     I mean, that's a significant amount of money in addition to  
12     the amount of money he has to pay for his defense fees. So if  
13     the Court would like a round figure, I mean, if that's what  
14     the Court is looking for, we will be happy to sort of provide  
15     it because as I can see it, we would love to ask for and we  
16     are going to ask for a speedy trial. I would love to be in  
17     court in 90 days.

18           I don't anticipate that is going to be the case, so  
19     I have a feeling that this may drag on for quite a bit. He  
20     has no liquidity and he is not making money. He is not  
21     working. He is sitting in Miami in home detention. He  
22     doesn't even have the ability right now to go work. So there  
23     is a significant issue related to the funds. But also, Judge,  
24     we also want to address the conditions.

25           THE COURT: Yes, I understand all that. But I just

1 want that one issue now because I think we need to focus on  
2 it.

3 MS. PINERA-VAZQUEZ: Yes.

4 THE COURT: So there is a liquidity issue. I need  
5 to know what the liquidity needs are. My understanding from  
6 the assets that the government has disclosed and both sides  
7 have disclosed is that there is no real dispute about those  
8 assets so that he does have assets. The question is he can't  
9 get to them at this point?

10 MR. PAPPALARDO: Well, precisely, Your Honor.

11 THE COURT: That is correct.

12 MS. PINERA-VAZQUEZ: That's correct.

13 MR. PAPPALARDO: The assets that remain are in  
14 properties in foreign countries. Those are not liquid.

15 THE COURT: Right.

16 MR. PAPPALARDO: And while they couldn't be used  
17 because the government wouldn't permit it as a basis for  
18 posting bail, you know, they are basically sitting there.

19 THE COURT: Right, so liquidity is an issue.

20 MS. PINERA-VAZQUEZ: Yes.

21 THE COURT: But then the next question was, does he  
22 have an income stream? I understand he's not out working 9:00  
23 to 5:00.

24 MR. PAPPALARDO: He is retired.

25 THE COURT: But he does have business interests.

1 Some people who are retired have stock portfolios. Others  
2 have interests in business. Is there something that is  
3 preventing him from getting liquid assets from any of his  
4 other business interests or securities that he holds or  
5 brokerage accounts or whatever?

6 MR. PAPPALARDO: Yes, Your Honor. He has an  
7 interest in companies. That interest is not what it used to  
8 be when he was running the company. But he does, depending  
9 upon how well the company is doing, he does receive, you know,  
10 stipends from time to time in connection with a company. The  
11 economy everywhere in South America isn't very good right now,  
12 but particularly that area, I mean, Brazil, Paraguay,  
13 Argentina.

14 And I cannot represent to the Court that there is no  
15 money. What I can represent to the Court is that the money  
16 that was in foreign accounts was basically all of his liquid  
17 assets, as the government knows, because they looked at this.  
18 They looked at his foreign assets. The only activity in his  
19 foreign bank accounts, Your Honor, the only activity for the  
20 past three years was a withdrawal from one of the accounts of  
21 \$400,000 so his daughter could get married. That's the only  
22 activity, no deposits, all withdrawals.

23 THE COURT: Okay. So it would be useful for  
24 Mr. Napout to disclose to the government, then, and to the  
25 Court, if necessary, any income stream that he does have,

1 because I think that, reading between the lines, I think that  
2 was one of the concerns the government had; is that right,  
3 Ms. Mace?

4 MS. MACE: Yes, it's something that we don't have  
5 any clarity on with regard to all of his properties overseas.  
6 Some of them it appears may be rental properties. He is  
7 getting income from those. He has substantial ownership in  
8 many companies and we don't have any visibility into what that  
9 is worth or how much he is actually receiving. So that would  
10 be very informative.

11 And I will just note again that originally as  
12 contemplated and as in the bond that was filed with the Court,  
13 only \$10 million of cash was to be posted. And the government  
14 is open to revisiting an issue if, for example, he doesn't  
15 have liquid assets to pay his lawyer, then we would be open to  
16 revisiting taking a million dollars of cash out of that and  
17 putting it into the lawyer's escrow account so that they could  
18 be paid.

19 And so something incremental like that without  
20 changing the total bond amount I think we would be happy to  
21 discuss if there really is a liquidity issue. We haven't seen  
22 it yet, but if there is -- if there is a true need and a true  
23 basis, then we would certainly entertain those sorts of  
24 discussions.

25 THE COURT: But as I understand the proposal, it's

1 also to have some of the money that's in the registry of the  
2 Court transferred to counsel's escrow found? Is that what you  
3 were saying?

4 MR. PAPPALARDO: I suggested that, Your Honor, only  
5 as a way so that it would perhaps address a concern that it  
6 would be Mr. Napout's hands and he would have access to flee.  
7 Your Honor, again, I mentioned to you that there isn't a  
8 single thing that this man has done since the beginning that  
9 is consistent with him wanting to leave. He wants to address  
10 these charges.

11 THE COURT: Yes, I understand all that. I have  
12 heard it clearly. But what you are saying is that to address  
13 the liquidity problems and to fund the defense, you are  
14 requesting that a certain amount of the money that has been  
15 deposited with Court be transferred to your escrow account?

16 MS. PINERA-VAZQUEZ: Yes, Your Honor.

17 THE COURT: And that is something I think you and  
18 the government I think at some point during break -- we are  
19 not going on forever, but during the break, you might want to  
20 discuss whether you can agree what that amount would be. I'm  
21 not sure that is something that needs to be addressed in open  
22 court at this point while you are negotiating it. But I can't  
23 see any reason why the government would object to having money  
24 to fund the defense go to the escrow account of counsel.

25 MS. MACE: In principle, no, I just think it should

1 be gauged towards the actually need.

2 THE COURT: Right.

3 MS. MACE: And we oppose changing the total amount  
4 of the bond. And if there's an incremental amount that is  
5 needed for immediate expenses, and frankly, they could come  
6 back if they spend it all and need more, then they come back  
7 to the Court and say he needs another \$500,000 off the bond or  
8 something to pay for expenses.

9 THE COURT: But and also living expenses?

10 MS. MACE: If that is a true need. I haven't heard  
11 that yet from them.

12 THE COURT: I think that should be something that  
13 could being worked out. So continue as to the other issues.

14 MS. MACE: Yes.

15 THE COURT: 24-hour security.

16 MS. MACE: I will note with regard to the  
17 presentation by Mr. Pappalardo with regard to whether or not  
18 he has sort of the desire to flee, that is something that is  
19 often difficult for a Court to gauge, and that is why we talk  
20 about the risk of flight and we talk about these factors,  
21 because we don't know what is in mind.

22 But I think one thing his conduct has shown can be  
23 interpreted in a different way than how Mr. Pappalardo has  
24 described it. He certainly waived extradition right away.  
25 And he made clear and it's clear in the medical report and

1 it's clear from what Mr. Pappalardo said that he desperately  
2 does not want to be in jail and he wanted to get out of jail  
3 as soon as he possibly could and he wanted to do what he could  
4 to stay out of jail.

5 Right now he's in the posture that he wants to fight  
6 the case, but that could change at any time when he starts to  
7 get a better understanding of what the case is about. And so  
8 his dedication to not going to jail, I think, can cut the  
9 other way. And I don't want to make too much of it, but it's,  
10 I'm just noting that he has the incentive. It's a very  
11 serious case, very substantial prison term, potentially, and  
12 that in addition to his assets that would allow him to do so  
13 without much, you know, and still allowing him to live a very  
14 comfortable life makes him a very substantial flight risk.

15 With regard to the strength of the case, we  
16 respectfully disagree with the defendant's presentation. And  
17 I will just note that the government's evidence includes the  
18 testimony of several witnesses that is corroborated by, among  
19 other evidence, internal records showing transfers, bank  
20 records and contracts that show flow of funds from sports  
21 marketing companies and consulting companies and consensual  
22 recordings involving co-conspirators that describe the entire  
23 conspiracy.

24 And so discovery as Mr. Pappalardo noted is ongoing  
25 and will continue to produce that. And in not too long, we

1 will be before Judge Dearie to discuss how the case is  
2 progressing. But the evidence is strong against Mr. Napout  
3 and we believe that that certainly counts in favor of  
4 increasing his risk of flight.

5 THE COURT: Can we just talk about that for a  
6 moment.

7 MS. MACE: Sure.

8 THE COURT: So the evidence you are saying includes  
9 testimony of witnesses corroborated by records showing  
10 transfers, consent all recordings. So there is some kind of  
11 electronic or other evidence? I think counsel thought there  
12 wasn't.

13 MS. MACE: Yes, and they noted there was, but they  
14 believe it doesn't have anything incriminating with regard to  
15 a recording of Mr. Napout. But, of course, this is a  
16 racketeering conspiracy case and there is evidence of many  
17 recordings of other co-conspirators as well describing the  
18 conspiracy and how it worked and who got money. And so there  
19 is that aspect of the case as well.

20 THE COURT: And so give me an example of one or two  
21 things that he is alleged to have done in furtherance of the  
22 conspiracy, if you can.

23 MS. MACE: Your Honor, the government was not  
24 required to allege overt acts. And I will just sort of note  
25 this. I'm not trying to -- the government's witnesses, and as



1 I said, there are several of them, have described Mr. Napout's  
2 conduct in detail which includes agreeing that several  
3 federation members would receive bribes in the context of  
4 international football. And I am not inclined to sort of give  
5 3500 early and describe, and there is a danger to those  
6 witnesses right now, and I don't want to detail what  
7 individual witnesses said.

8 But we are very confident about our case about  
9 Mr. Napout as well as all the others. And in a large RICO  
10 conspiracy, we will present that full picture to the Court and  
11 to the jury of the racketeering conspiracy that involved many  
12 different defendants who played different roles.

13 THE COURT: But you are telling the Court that he  
14 was directly involved in bribe payments or some other illegal  
15 activities?

16 MS. MACE: Yes, and in the agreement that there  
17 would be bribe payments.

18 THE COURT: In the agreement that there would be  
19 bribe payments?

20 MR. PAPPALARDO: If I could comment on that, Your  
21 Honor, what she is really telling the Court is that there are  
22 witnesses who say that others were involved. Mr. Napout was  
23 not captured on tape doing any of this. The records that she  
24 is referring to, I submit to the Court, are nothing more than  
25 the people who are bribing everybody, taking money out of

1 banks accounts to do so.

2 That money doesn't go to Napout. It doesn't go to  
3 his bank accounts like it does to everybody else. And I would  
4 suggest to the Court, and we are not trying the case here, I  
5 know who the three witnesses are. I have a sense of what they  
6 are going to say and I can tell you that there is a dramatic  
7 incentive for them to say what they are saying to help  
8 themselves.

9 THE COURT: Right. And obviously we are not trying  
10 the case here, but you are also saying that he didn't profit  
11 personally from this?

12 MR. PAPPALARDO: That's exactly right, Your Honor.

13 THE COURT: And the government seems to be saying  
14 that he was part of an agreement that was illegal and doesn't  
15 want to go farther as to whether he profited from it or not,  
16 but that he was part of illegal agreements. Is that  
17 essentially a fair summary of where we are?

18 MS. MACE: I think that's what I would proffer  
19 today.

20 THE COURT: Yes.

21 MS. MACE: And I will note the government can  
22 proceed by proffer and we can also not. You know, we can  
23 choose not to and so Your Honor will assess this as he will.  
24 But there are reasons including witness security that I don't  
25 want to go into more detail.

1 THE COURT: I understand.

2 MS. PINERA-VAZQUEZ: Your Honor, may I just say one  
3 thing, please, because the government did say something about  
4 bank transfers. There is not one allegation in the indictment  
5 that there was a bank transfer to any of Mr. Napout's accounts  
6 as opposed to the other defendants. And indeed, we have  
7 received three responses to the standing discovery order of  
8 which there is not one bank record that would have contradict  
9 is that statement.

10 In addition, Judge, the one recording we have got,  
11 one recording, we are here now three months into the  
12 arraignment. The only other discovery we have gotten is a  
13 recording where my client basically says, "Hello, how are  
14 you?" That's it. Are there people talking about the  
15 conspiracy and what they are doing? Sure. There is tons of  
16 incriminating [sic] against other people, but not against  
17 Mr. Napout.

18 And this is an important factor, Your Honor, because  
19 as we sit here today for this modification request, the Court  
20 is obligated to look at what it has before it. And this is  
21 what it has before it. It doesn't have Jencks materials  
22 because we haven't been provided 3500 Jencks materials because  
23 the government doesn't want to because they are alleging some  
24 security. I'm not sure exactly if she is trying to make it  
25 seem like our client would somehow harm these witnesses. I

1 would hope not because there is no evidence of that. So I  
2 want to be sure the record is clear.

3 But the most important thing, it goes to the weight  
4 of the evidence, which is one of the four factors that the  
5 Court should consider. As we expressed in our request for  
6 modification, at this juncture today on February 25th, the  
7 evidence that the government has is weak. And it's a factor  
8 that it should consider in fashioning some of the conditions.  
9 It's not only the money, it's the conditions.

10 THE COURT: I think we have exhausted that issue.

11 MS. MACE: I would like to clarify one point that  
12 was made earlier that Mr. Napout is not named in any  
13 forfeiture counts. He is. He faces forfeiture with regard to  
14 the four counts, Counts 8 -- or, excuse me, 9, 10, 83 and 84  
15 subject to forfeiture. So I will just clarify that point.

16 I do want to speak about the specific conditions  
17 apart from the money. If I could move to that, Your Honor?

18 THE COURT: Yes.

19 MS. MACE: The defendant is in Miami, and the  
20 defense has proposed that he be put on a 7:00 p.m. to  
21 7:00 a.m. curfew. And it's suggested that the GPS and the  
22 private security are duplicative or are redundant in some way.  
23 And we disagree. And I actually spoke to another officer at  
24 Pretrial yesterday to try to understand this curfew issue and  
25 what the benefits and drawbacks are to having a curfew.

1           And I think essentially it is the window of time the  
2 defendant has to flee, like, how long they have before someone  
3 is going to notice that he is gone. On the defense proposal,  
4 he would have 12 hours before anyone noticed. And for Miami,  
5 you can get really far from the United States in 12 hours. He  
6 can be home free. He doesn't have to go to an airport. You  
7 can leave from Miami, and so we don't think that that is  
8 reasonable.

9           And as I said at the beginning, if he needs  
10 exercise, we can explore how to do that appropriately or needs  
11 fresh air and so forth. For example, if it the home  
12 confinement is now a specific apartment, and I don't know if  
13 that's the case, then we would be open to exploring whether it  
14 can be the whole compound as Mr. Pappalardo described. It has  
15 the swimming pool and that outdoor areas and so forth. And I  
16 think that would be a reasonable way to address it where you  
17 don't just take off all the conditions so you give the  
18 defendant this huge period of time in which he can flee.

19           With regard to GPS and the private security, we  
20 don't see those as redundant, because neither is perfect. And  
21 so each is intended to make up for some of the problems with  
22 the other. GPS can give, as I understand it, an indication  
23 that the defendant is not home, but it takes quite some time  
24 for someone to act on that. And Mr. Ilaria may be better able  
25 to speak to that than I can, but I think Pretrial's process is

1 when they get an alert, try to call someone, try to locate the  
2 guy eventually. And sometimes it's the next day and sometimes  
3 they don't find the next person.

4 And I have a case in this court now where someone  
5 did just cut off the bracelet and leave and hasn't been found  
6 because before, it's not that the squad cars all come out and  
7 try to find someone. It's quite some time before somebody  
8 notices. And so if you add that on top of the proposal for a  
9 curfew, you have a big window in which someone can flee.

10 The private security we view as very important and  
11 useful, but it's not perfect in itself either, because it adds  
12 the human element. And I'm certainly not making any comment  
13 about the specific company involved, but any time you have a  
14 situation where you have human beings making the decision and  
15 an extremely wealthy person who has the opportunity to buy  
16 someone off, there is that risk.

17 So that's a general risk. I am not speaking  
18 specifically about Mr. Napout or the company, but that is one  
19 of the things that is imperfect about the private security and  
20 that is why we recommended to the Court to do both.

21 THE COURT: Have you had instances where there have  
22 been problems with private security?

23 MS. MACE: Frankly, Your Honor, this case is unique.  
24 It's the first time I have had a defendant on a private  
25 security. It's a company that the government does not

1 monitor. We were informed of who it was and we don't see any  
2 problem in principle with the company, but we don't know who  
3 the individual people are who are watching him. It's an  
4 unknown. And I don't want make more of it than it is, but  
5 it's something that is imperfect is how I will say it.

6 And with regard to movement and his health,  
7 obviously his health is important to the Court and everyone  
8 agrees he should be in a healthy environment. If he can move  
9 about this compound where he has multiple apartments, a  
10 swimming pool, an outdoor area, it is not an overly difficult  
11 living situation.

12 And if, and I just note, also, in the medical  
13 report, without getting into any detail, the doctor did  
14 indicate that Mr. Napout is improving and his treatment and  
15 his plan is working and that he is getting back to his  
16 baselines the doctor hoped. And so I noted that it doesn't  
17 say he is getting worse. It says he went through a traumatic  
18 experience in getting arrested and the doctor is treating him.

19 If there is a specific thing like access to the  
20 swimming pool, then by all means I think we should explore  
21 that if that's going to help him. But that doesn't counsel in  
22 favor of changing the amount of the bond or taking off the  
23 security that is in place to prevent flight.

24 THE COURT: Right. Just for the record, I am  
25 looking at the compound now on Google Maps.

1 MS. MACE: Oh, really?

2 THE COURT: Just to see what it looks like. It is  
3 19333 Collins Avenue; is that right, in Miami?

4 MR. PAPPALARDO: I believe that's right, Your Honor.  
5 We can provide information about that, Your Honor, if you  
6 would like.

7 THE COURT: All right. If the Court, and this is a  
8 question for Pretrial Services as well as for the government  
9 and the defense, if the Court were not inclined to give a  
10 12-hour curfew with 12 hours off monitoring, but were inclined  
11 to expand the hours for exercise or moving around the compound  
12 or something else, again, I can't tell from this picture, but  
13 it looks as though this building is a fairly large building.

14 It looks as though it's got -- maybe counsel who is  
15 there can describe it -- looks as though there are areas  
16 inside the building that are probably electronically secured  
17 so people can't come in or out without a key but that it could  
18 go to, I'm guessing to a pool area. Is the beach back behind  
19 it as well?

20 MR. PAPPALARDO: The beach and the pool area, the  
21 pool area is secured. There's an exercise room on a different  
22 floor that is secured. The entire compound is secured.

23 THE COURT: Okay.

24 MR. PAPPALARDO: It's covered by electronic  
25 surveillance and it's designed, it's designed to keep people



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1 out. So there is a lot of -- there is a lot of cameras  
2 everywhere. You can't get into the building without being on  
3 camera. You can't leave without being on camera. But it's  
4 the entire compound.

5 THE COURT: Okay. And is it a fairly large  
6 compound?

7 MR. PAPPALARDO: Yes.

8 THE COURT: It looks very large.

9 MS. PINERA-VAZQUEZ: Yes.

10 MR. PAPPALARDO: It's a large compound.

11 THE COURT: Okay. So talking to Pretrial Services  
12 now, to allow, rather than letting him roam through Miami and  
13 I may not even want to do that anyway with such a nice place  
14 where he is going to be, if he could have access to all the  
15 grounds, the exercise room, the pool, what problems would that  
16 present for monitoring?

17 PRETRIAL OFFICER ILARIA: Your Honor, well, first,  
18 just so it's clear, Your Honor has seen me tapping on my  
19 phone.

20 THE COURT: Yes.

21 PRETRIAL OFFICER ILARIA: I just want you to know I  
22 have been accessing file documents. I haven't been texting,  
23 just so that's clear.

24 THE COURT: I know you well enough.

25 PRETRIAL OFFICER ILARIA: But to speak towards the

1 compound movement, we would want this to be done within the  
2 framework of a home detention case.

3 THE COURT: Yes.

4 PRETRIAL OFFICER ILARIA: Meaning that I think  
5 schedules would be carved out of a home detention bond that  
6 would allow him time to go downstairs to the gym or to  
7 wherever this is he wants to exercise, rather than give him,  
8 perhaps, blanket access to the entire grounds. I think  
9 counsel is respectfully relying on third-party cameras and  
10 things like that that are going to catch someone doing  
11 something they shouldn't do. Pretrial Services doesn't use  
12 those resources as a way to monitor someone.

13 THE COURT: Right. But if he wanted to spend an  
14 hour or two down by the pool reading or hanging out with his  
15 family or if he wanted to go to another apartment to visit his  
16 family or whatever else, that wouldn't be difficult to carve  
17 out time to do that with preclearance from Pretrial Services,  
18 right?

19 PRETRIAL OFFICER ILARIA: Yes, Your Honor, although  
20 I use the word frivolous here when we are talking about  
21 spending time at the pool and those are typically not  
22 activities that someone on house arrest does. We don't  
23 typically grant those kind of requests. If he were to call me  
24 and say, hey, I would like to go swimming right now, I would  
25 look at the bond and I would tell him no, you can't do that --

1 THE COURT: Right.

2 PRETRIAL OFFICER ILARIA: -- unless there is a Court  
3 order.

4 THE COURT: Well, it is really a question of risk of  
5 flight. Would there be a risk of flight if a person who has a  
6 mental disorder or an anxiety disorder, panic attacks or  
7 whatever else? Again, I don't know how large this apartment  
8 is. Maybe his apartment is so big, beautiful and wonderful we  
9 don't need to worry about that, with a terrace.

10 But there has been literature about confinement, you  
11 know, to certain areas what effect that can have on people  
12 with mental disabilities. And my question is, is there some  
13 kind of relief from confinement to one area that would both  
14 satisfy our security concerns and make it easy for you to  
15 monitor? So, for example, how precise is the GPS monitoring?  
16 Will we know where he is in the building? Is it that close to  
17 monitoring, or is it, like, an iPhone, the way you find an  
18 iPhone?

19 PRETRIAL OFFICER ILARIA: Your Honor, that's a great  
20 question. It gives us a pretty good idea of where someone is,  
21 I can tell you in handling my own GPS cases there are things  
22 like drift zones and points that can affect what kind of  
23 reading you are getting. Just to give the Court perspective,  
24 it's not as if there is an officer staring at a screen and  
25 smoking a cigarette and refreshing their screen to see where

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1 someone might be in that second. It's not that kind of an  
2 active supervision.

3 We are always just reacting. Someone makes a  
4 choice, we have to react to it. And as the government pointed  
5 out, and she's right, there is a process before we draw a  
6 conclusion that someone may have perhaps violated their bail.  
7 That's a long process.

8 THE COURT: But you also have the security person  
9 there, too. I mean --

10 PRETRIAL OFFICER ILARIA: Correct.

11 THE COURT: We haven't dispensed with that quite  
12 yet. I would be surprised if we couldn't come up with a way  
13 to give him a little more freedom in this building. I mean,  
14 it is house arrest, but to a larger facility with, you know,  
15 the possibility to go in and out of those places. So my  
16 question for you really is, does that make it unmanageable?  
17 Does it make it too difficult to monitor?

18 PRETRIAL OFFICER ILARIA: I would want to talk to  
19 the officer in Florida to get -- I know she has probably been  
20 to the house and been to the compound and could speak more  
21 intelligently about that and it's possible.

22 THE COURT: Should we get her on the line?

23 MS. PINERA-VAZQUEZ: Yes.

24 PRETRIAL OFFICER ILARIA: Your Honor, we  
25 respectfully ask we not have that conversation on the record.

1 I guess Pretrial Services is here. We are here representing  
2 our position. And just so it's clear, I don't want to beat a  
3 dead horse, but the suggestions made that are outlined in  
4 counsel's memo are not the official recommendations of  
5 Pretrial Services.

6 THE COURT: No, I understand that, but it provides  
7 facts rather than recommendations. For example, she could  
8 check and see if there are dead spots in the building and keep  
9 him away and say he is not authorized to go to those dead  
10 spots. For example, if an outside exercise area is a place  
11 the GPS doesn't work, he couldn't go there.

12 PRETRIAL OFFICER ILARIA: Correct. And that's  
13 something where the officer could, you know, with the home  
14 detention framework, could carve out a schedule for him, let's  
15 say on a Monday from 2:00 to 4:00 to go to the gym. We can  
16 create something that would help her get a really good idea  
17 that he was in the gym for that time. So yes, in that sense  
18 it's workable. But I guess at some point Pretrial would have  
19 concerns if these requests become, what we would consider  
20 frivolous, with all due respect in using that word.

21 THE COURT: But I'm looking at how serious the risk  
22 of flight is at this point. And with a lot of safeguards in  
23 effect, the home detention, not being able to leave the  
24 building, we are talking about personal liberty being  
25 restricted because there is a preponderance of the evidence

1 showing from the government that without these conditions, he  
2 would be an unreasonable risk of flight.

3 So I'm not concerned -- he has a right to decide  
4 what he wants to do during the time that he has that freedom  
5 if he is not a risk of flight. So I'm just looking to give, I  
6 don't care if it's the pool. I want him to have the amount of  
7 liberty that he is entitled to so that he is up to the point  
8 where he would become a risk of flight.

9 MS. MACE: If I could just note that already as part  
10 of the bond, there is sort of that concept worked in that we  
11 agreed at the proposal of defense counsel that 90 minutes a  
12 day was an appropriate amount of time to be out to do those  
13 sorts of things. If now based on having received an  
14 additional assessment by a doctor they think that number is  
15 not quite right and it should be, you know, an hour in the  
16 morning and an hour and a half in the afternoon, then that  
17 should be the proposal.

18 And I think that could make sense. If that is what  
19 would be, you know, if the supervising Pretrial Officer in  
20 Florida thought that that was workable, and it sounds like she  
21 must be already doing that because there's the 90 minutes a  
22 day already. And I suspect there is some kind of schedule or  
23 communication to make that work. And if that's not  
24 sufficient, then we should just, you know, make it sufficient.  
25 You know, and so if the request is for something specific like

1 that, like an hour in the morning, then the government  
2 wouldn't have an objection to that.

3 PRETRIAL OFFICER ILARIA: Your Honor, I would also  
4 add we have many defendants, of course, who are on house  
5 arrest and many of them don't have the luxury of living in a  
6 compound. They are in project housing.

7 THE COURT: Of course.

8 PRETRIAL OFFICER ILARIA: They are in tiny  
9 apartments that, with all due respect to them, they are  
10 terrible. And they have mental health conditions. They are  
11 actively getting treatment. So I think the concept that this  
12 is almost unbearable, I think is almost unfair to represent  
13 that here, I think. And this is a perfect example of the fact  
14 that he already has some time out certain days a week to do  
15 certain things I think is a flexibility that was built into  
16 the bond from the day he was released.

17 THE COURT: I understand there's flexibility there.  
18 Given the history of what he has done, you know, what I have  
19 heard from counsel and the amount of assets that the Court has  
20 under its control, I'm not concerned that he would be a risk  
21 of flight if his time out were expanded a little bit.

22 I do find that, I do think that the 12 hours, I  
23 think the government was persuasive on the 12 hours, at least  
24 at this point, is something that I'm less comfortable with and  
25 I think that there may be more of a risk of flight there.

1 MS. PINERA-VAZQUEZ: Your Honor?

2 THE COURT: A shorter period of time I think we can  
3 handle.

4 MS. PINERA-VAZQUEZ: May I address one thing just to  
5 clarify. I don't want the Court to think that we don't  
6 believe that there should be monitoring within those 12 hours.  
7 We believe that he should continue with his GPS monitoring,  
8 his ankle monitoring. We are just asking for a curfew from  
9 7:00 p.m. to 7:00 a.m., meaning he has to be home during those  
10 hours. But he will continue to be monitored with a GPS and  
11 everything, the ankle monitoring. We are not requesting that  
12 that be removed.

13 And I would like to address two things that  
14 Mr. Ilaria said. First of all, certainly mental health is not  
15 frivolous. And sitting by the pool, if that helps your mental  
16 health and reading a book, we would respectfully disagree that  
17 it's a frivolous request, as the Court I think has recognized.

18 But more importantly, I think that one of the things  
19 that we would request is that Ms. Serrano who has been to the  
20 compound, and I specifically, I can represent to the Court  
21 that I have spoken to her and she did express that it would be  
22 probably, that they could monitor Mr. Napout with his GPS in  
23 the facility. In fact, as we all know because Apple is in the  
24 news every day and "The Good Wife" just did this episode on  
25 TV, monitored by a phone. In fact, it could be reverse



1 monitoring right here in this courtroom.

2           So for Pretrial Services to come in and say that  
3 they can't monitor Mr. Napout in a GPS basically when he's  
4 going to the bathroom, I think is really not representing what  
5 technology is today. And I did have this conversation with  
6 Ms. Serrano and she did say that they could monitor him within  
7 the building. Now, you are right, there may be hotspots, but  
8 he can be monitoring if he goes to the Burger King down the  
9 street to get a burger. He can be monitored if he goes out  
10 into the pool area and goes swimming.

11           So that's what we are requesting, that that  
12 continue, the monitoring continue. And if the Court wants  
13 more information, maybe we should call Ms. Serrano. She has  
14 been to the building. She has been in his apartment. And the  
15 analogy to this, Your Honor, is it's like someone on GPS  
16 monitoring restricted this his kitchen. He can't leave his  
17 kitchen because that's the apartment, the kitchen. He can't  
18 go into the bedroom. He can't go to the outdoors, the  
19 curtilage, because that's what basically he is restricted to  
20 right now in that apartment.

21           And as the Court knows with his mental report that  
22 we submitted, that sort of adds to the restrictive nature and  
23 the anxiety and the panic attacks. And that's something that  
24 the Court should consider when fashioning the least  
25 restrictive measures which I bring back because that's what

1 the Bail Reform Act did, the least restrictive measures in  
2 order not to violate the Eighth Amendment and the excessive  
3 fines clause, Judge, which we haven't addressed the law issue,  
4 but I have some good caselaw on that and how this is excessive  
5 as far as the conditions and the Eighth Amendment.

6 THE COURT: Right. I think we all know what the law  
7 is. The real question is can we fashion something that will  
8 reasonably reduce the risk of flight and still allow this  
9 defendant an opportunity to have the liberty that he is  
10 entitled to under the Constitution? And that is the question.

11 And I think the 12 hours out, to me, I'm not  
12 comfortable with that based on what I have heard so far. I do  
13 think that we can expand his time and give him more  
14 scheduling. It can be done within the compound, certainly, on  
15 a regular basis, and perhaps a little more time out, you know,  
16 during the day, but subject to Pretrial Services feeling  
17 comfortable through its supervisory office here which has the  
18 final comfort level decision, but also through, you know, its  
19 officer who is there who is able to monitor the building and  
20 know how easy it is to make a decision.

21 So I think that is perfectly reasonable. He did  
22 waive extradition. He has been in touch with the government  
23 for a long period of time. He has a substantial amount of  
24 assets that are being detained. What to me is very important  
25 is that his family is there, moved there with him essentially

1 and then moving his -- an 84-year-old mother, I think that is  
2 not an insignificant issue and I think it shows a commitment  
3 to be tied to that area. So I think without eviscerating the  
4 bond, we can still prevent the risk of flight by expanding it.

5 MR. PAPPALARDO: Your Honor, may I just add one  
6 point very briefly in response to what the government has  
7 argued. They indicated that Mr. Napout would be dedicated not  
8 to be in jail. I think if it you look at the quote in that  
9 report, that was a reference to not wanting to be in jail  
10 because when he was in Switzerland, he was immediately  
11 arrested. They took away his medication, exacerbating his  
12 mental condition. And that is exactly what he was referring  
13 to in that report.

14 THE COURT: I understand. I don't think you need to  
15 say anymore about that. I can't imagine many defendants  
16 wanting to be in jail.

17 MR. PAPPALARDO: No, I understand. But to use that  
18 as a basis of risk of flight, and given this has not been  
19 raised and I throw it out to the Court, given his mental  
20 condition which the Court is aware of, somebody would -- the  
21 last thing they would want to do is try to get out because  
22 they would be, the whole world would focus on them. This man  
23 wants to address these charges.

24 THE COURT: I understand. And also he knows that if  
25 he does violate the bond --

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1 MR. PAPPALARDO: Absolutely.

2 THE COURT: -- he is locked up for the duration.

3 MR. PAPPALARDO: That would provide substantial  
4 evidence for the government, Your Honor, if that happened.

5 PRETRIAL OFFICER ILARIA: Your Honor, if I may make  
6 one minor request, if you are heading towards an order that he  
7 have access to the compound, I just would respectfully request  
8 that that be so ordered and then I can have contact with the  
9 officer in Florida and articulate to her what that means and  
10 she can figure out --

11 THE COURT: Sure.

12 PRETRIAL OFFICER ILARIA: -- the compound is.

13 THE COURT: With reasonable limitations and, you  
14 know, time periods. We are not saying 24-hour access to the  
15 whole compound, but reasonable access, you know, through the  
16 day so he can have some freedom of movement throughout the  
17 compound.

18 PRETRIAL OFFICER ILARIA: Thank you.

19 MS. PINERA-VAZQUEZ: Your Honor, how about the 24/7  
20 security, if I could address that? As the Court is already  
21 tired of hearing about that, here is the thing. And I  
22 actually, I want to briefly refer to a case out of the Eastern  
23 District where Judge, I think it's Weinstein described  
24 electronic monitoring as being similar to a feral animal.  
25 That's electronic monitoring. You are monitored every day of

1 every moment and that's electronic monitoring, which he  
2 considered was extremely restrictive. And in this case, he  
3 actually --

4 THE COURT: Is that in the child pornography case?

5 MS. PINERA-VAZQUEZ: Yes, *Polouizzi* case. It's  
6 actually a great quote, "Feral animal, a wild animal from a  
7 domesticated" -- I forgot. But anyway, I think that we cannot  
8 lose sight of the fact that electronic monitoring with home  
9 detention with curfews is extremely restrictive. And it  
10 wasn't contemplated under the Bail Reform Act. This is  
11 something that Pretrial Services added and it's part of the  
12 condition that can be implemented to sort of mitigate the risk  
13 of flight.

14 And we don't have any objection to that. We agree  
15 that that is appropriate in this case. But we can't lose  
16 sight of the fact it is restrictive. And the addition of the  
17 24/7 security takes it just to another level because not only  
18 the expense, but also, he walks outside his apartment door and  
19 he has got a gentleman there that gets him, takes him to the  
20 car, puts him in the car, drives him if he needs to go to our  
21 offices, which we have also argued that there could be a  
22 certain violation of the defense because we have to let  
23 Pretrial Services and FBI know every time he's going to come  
24 to our offices. Let's say we have to go to a site to meet  
25 with a witness.

1 THE COURT: They are going to know that with the GPS  
2 anyway.

3 MS. PINERA-VAZQUEZ: That's with the GPS, but we  
4 don't have to alert FBI. If he only has GPS, we don't have to  
5 alert FBI. That's an additional condition. We have to alert  
6 FBI. Our 24/7 security officer has to call Pretrial Services  
7 and the FBI agents on this case and let them know, hey, they  
8 are going to the lawyers in Miami.

9 I didn't stress it in our argument, but that is sort  
10 of an invasion to our defense strategy. How about if he wants  
11 to go visit a witness? We have got to let the FBI know where  
12 we are going, maybe not who we are going to see, but they  
13 could have monitoring to see who we are going to see. They  
14 could do some surveillance; I don't know.

15 THE COURT: Why do you think he has a  
16 non-association clause?

17 MS. PINERA-VAZQUEZ: I'm sorry?

18 MR. PAPPALARDO: There are witness who have nothing  
19 to do.

20 MS. PINERA-VAZQUEZ: Right, exactly. So the 24/7  
21 security, we submit to the Court is excessive. The fact that  
22 he has the electronic monitoring, the home detention and the  
23 ability to move within the facility is more than sufficient  
24 combined with the conditions of bail as far as the money is  
25 concerned. His family is here. I think that that is more

1 than sufficient to assure his appearance in court, which is  
2 where the Court should be, the least restrictive conditions.

3 THE COURT: Okay, any other issue we haven't  
4 discussed?

5 MS. MACE: I don't believe so.

6 THE COURT: Okay. What is the government's position  
7 on the 24-hour security? First of all, is that security  
8 necessary, and secondly, is there a less restrictive form of  
9 that security that would be helpful?

10 MS. MACE: It's our position that it's necessary for  
11 the reasons I stated earlier. With regard to notice, the last  
12 point that was made to the FBI, if defense counsel feels  
13 somehow constrained by that for attorney visits, we wouldn't  
14 have any objection to lifting that aspect, that there could be  
15 notice to just Pretrial Services.

16 THE COURT: All right. So let's get back to the  
17 financial aspects. I think it is appropriate to modify the  
18 bond with respect to the financial aspects of the bond. I am  
19 going to ask counsel to discuss with each other a mechanism to  
20 ensure, without unduly burdening the attorney-client  
21 relationship, the free and adequate flow of funds between  
22 Mr. Napout and his counsel so that he can fund his defense  
23 fully, and the same for living expenses as well, if there is  
24 an issue there. And I don't think you are going to have a  
25 disagreement about how to do this. And I think that both

1 sides have agreed and the Court thinks it is a good idea that  
2 those funds should be transferred to counsel's escrow account.

3 Does that take care of the liquidity issue?

4 MR. PAPPALARDO: It does, Your Honor.

5 MS. PINERA-VAZQUEZ: Yes.

6 THE COURT: All right. Moving on to whether the  
7 amount of the security is excessive at this point, I think if  
8 the liquidity is being dealt with and given some of the other  
9 concerns and the expansion that I think is appropriate in the  
10 defendant's movement, I am going to leave the amount of the  
11 bond, the bond amount at the amount that it is. I'm not going  
12 to change that. And I'm not going to change the amount that  
13 has been pledged at this point.

14 If it becomes a hardship or if it seems if, with the  
15 passage of time it seems appropriate to make another  
16 application, I am not preventing you from doing that. Given  
17 the extent of Mr. Napout's assets, I don't think that it is  
18 inappropriate to keep the bond the way it is. Otherwise with  
19 respect to the financial part --

20 MS. PINERA-VAZQUEZ: I'm sorry, Judge. I apologize;  
21 I don't understand. So because I just want to make sure, so  
22 the bond right now is set at 20 million.

23 THE COURT: Right.

24 MS. PINERA-VAZQUEZ: Let's say for the purposes this  
25 discussion we are asking for a million.



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1 THE COURT: Right.

2 MS. PINERA-VAZQUEZ: The bond obviously will be  
3 lowered to 19 million, right?

4 MS. MACE: No, the total amount of the bond --

5 THE COURT: The total amount of the bond is the  
6 same, but the amount that you have to have in the registry of  
7 the Court --

8 MS. PINERA-VAZQUEZ: Okay.

9 MS. MACE: The security amount.

10 THE COURT: -- will be different. The secured  
11 amount will be reduced.

12 MS. PINERA-VAZQUEZ: I understand. So it will still  
13 be 20 million, perfect.

14 THE COURT: The face amount is the same.

15 MS. PINERA-VAZQUEZ: Yes.

16 THE COURT: The secured amount, it will be like a  
17 bank account --

18 MS. PINERA-VAZQUEZ: Right.

19 THE COURT: -- that is transferred from one to  
20 another.

21 MS. PINERA-VAZQUEZ: Thank you, Judge.

22 THE COURT: Okay. With respect to the curfew, as I  
23 said, I don't think -- I am not comfortable with the curfew  
24 idea at this point. And I don't want to set an exact amount  
25 of time that he can go out to the compound.

1 I would like to see what Pretrial Services and the  
2 defendant can agree to. And assuming that it is something  
3 that you all can live with, then I am not going to interfere  
4 with that, because I think Pretrial Services should have the  
5 discretion. If you can't agree on it, then I am prepared to  
6 set a time that I am thinking. And I don't think that it is  
7 inappropriate to allow him to go to any place whether it is  
8 something that would be found in a housing project or not.

9 I understand fully the concerns that Pretrial  
10 Services has, but he is in this compound and we are talking  
11 about a restriction on the liberty that he would otherwise  
12 have in the life that he lives, so that it doesn't matter to  
13 me whether the time out of his personal apartment would be to  
14 allow him to go to a pool area or an exercise area or a  
15 closet. It really doesn't matter. It's any space he could  
16 move to that is monitorable.

17 With respect to health, obviously the bond is  
18 flexible enough to allow him to see a doctor as often as he  
19 needs to. I don't think that that's a concern.

20 Notice to the FBI when he leaves the building, I  
21 think that is appropriate. I think that should still take  
22 place. I appreciate the government's offer to suspend that  
23 and have only where attorney visits or attorney-related travel  
24 is taking place and that would be notice to Pretrial Services,  
25 then.

1           And then the security is an interesting issue. And  
2   it is, for me, I would wonder whether there is a way to --  
3   whether 24-hour security is necessary, whether there is some  
4   lesser time. But again, I am not sure how the security  
5   actually functions. When he is asleep at night, is there  
6   somebody outside the apartment? Is that how it works?

7           MS. PINERA-VAZQUEZ: 24/7. There is one person.  
8   They have two shifts of 12 hours. And basically they sit  
9   outside the apartment. And by the way, just so the Court is  
10   aware, there is actually video surveillance. There is a  
11   videocamera outside of entrance to his door.

12          THE COURT: And that goes to the security firm?

13          MS. PINERA-VAZQUEZ: And that goes to the security  
14   firm. And they also have a cabana downstairs. So the  
15   officer, whoever is in charge that day is with him either  
16   outside his apartment or in the cabana. But he cannot move.  
17   He can't do anything outside of his apartment without their  
18   presence. So it's quite restrictive.

19          THE COURT: So I think we can reduce the security  
20   from 24 hours to a shorter amount of time.

21          MR. PAPPALARDO: Yes.

22          THE COURT: Yes.

23          MR. PAPPALARDO: Just on that point, I want to make  
24   it clear to the Court we are fine with the idea, for instance,  
25   if he has to travel to New York, that he have security. The

1 firm that he is using was started by the former SAC of the  
2 DEA. His point person was with the FBI last fall. And, you  
3 know, in terms of traveling back and forth for court purposes,  
4 we are fine with that. That's not a problem.

5 But what we are concerned about is that, number one,  
6 we believe, we submit to the Court that it is unnecessary. It  
7 is a tremendously added expense on a monthly basis. It is  
8 well over a million dollars a year we don't think he ought to  
9 be incurring, particularly with \$75,000 a month, Your Honor.

10 THE COURT: Right. That isn't a million.

11 MR. PAPPALARDO: No, you're right.

12 MS. PINERA-VAZQUEZ: It's 800-something thousand.

13 MR. PAPPALARDO: The point is it's a significant  
14 expense. It would be to me. The bottom line is we are not  
15 trying to compromise, but we think the Court and we submit the  
16 government is adequately protected.

17 THE COURT: I hear what you are saying. Is there a  
18 way that whenever he leaves the building that there would be  
19 some security with him? Because I just don't know how that --

20 MR. PAPPALARDO: Certainly we could work that out if  
21 he left the building compound, yes.

22 THE COURT: Yes?

23 MR. PAPPALARDO: Absolutely.

24 THE COURT: If you had video surveillance outside  
25 his door and downstairs and then security every time he left

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1 the building, as well as notice?

2 MR. PAPPALARD0: That's fine, Your Honor.

3 MS. MACE: I don't know that that will reduce the  
4 cost if that is what they are getting at.

5 MS. PINERA-VAZQUEZ: Of course.

6 MS. MACE: It depends on the schedule.

7 THE COURT: Yes. That's what I wasn't sure if it  
8 was feasible. I will certainly entertain that.

9 MS. MACE: And it means that he only goes out once a  
10 week so that he only pays security once a week. I don't know  
11 if that's --

12 THE COURT: However they want to do that.

13 MS. PINERA-VAZQUEZ: It would be 24/7.

14 THE COURT: I'm totally fine with not having someone  
15 there 24/7. I am only concerned when he leaves the building.

16 MR. PAPPALARD0: If we could discuss this amongst  
17 ourselves, Your Honor, perhaps we could come up with an  
18 agreeable proposal.

19 THE COURT: And again, your assurance that there  
20 will be video surveillance outside the door and downstairs is  
21 an important part of this.

22 MR. PAPPALARD0: There is. I will represent to the  
23 Court I have seen it. I have witnessed it.

24 THE COURT: Okay.

25 MR. PAPPALARD0: And it's there and we can confirm

1 it with Pretrial Services.

2 MS. MACE: And just for clarification, we are not  
3 talking about the building security.

4 MS. PINERA-VAZQUEZ: No.

5 MS. MACE: We are talking about the private security  
6 company.

7 THE COURT: Yes.

8 MS. MACE: And the other end of that camera 24/7, I  
9 guess.

10 THE COURT: Yes.

11 MS. MACE: That's right? Okay.

12 THE COURT: There would have to be somebody  
13 monitoring that camera to know whether he left, because that  
14 is the gap that Pretrial Services and the government have.

15 MS. MACE: Thank you, Your Honor.

16 MS. PINERA-VAZQUEZ: Let me just be clear. What we  
17 request is that we get the physical person being there is  
18 gone. The video surveillance, whoever monitors it, will have  
19 to give notice to leave, because he will need security to be  
20 able --

21 MR. PAPPALARDO: To leave.

22 MS. PINERA-VAZQUEZ: -- to leave.

23 THE COURT: Exactly. And that would be arranged, I  
24 guess Pretrial Services and the security service would make  
25 arrangements.

1           PRETRIAL OFFICER ILARIA: Just spitballing here, the  
2 defendant has to get permission from the officer first. Once  
3 he has permission, I'm not sure how it has been working. Does  
4 he contact security and they assign somebody to go over there?

5           THE COURT: Pretrial.

6           MS. PINERA-VAZQUEZ: I can tell you how it has been  
7 working. What happens is Anthony who is the head, the person  
8 in charge of the security, the former FBI agent, contacts  
9 Ms. Serrano, sends an e-mail and tells him at 2:00 he has to  
10 be at the lawyer's office or he has a medical visit. And  
11 that's how she knows. We don't need pre-approval for those,  
12 by the way. That is already in the bond.

13           And then at that point with the new structure we  
14 would alert Anthony, the company, who then picks him up and  
15 drive him to the lawyer, drives him to the doctor, drives him  
16 to the groceries, to church, wherever he goes. And he would  
17 always have security when he leaves the building.

18           MS. MACE: I think she is proposing removing that  
19 person who communicates to Pretrial.

20           MS. PINERA-VAZQUEZ: No, he would be the one in  
21 charge still.

22           MS. MACE: He would be there 24/7?

23           MS. PINERA-VAZQUEZ: No. That is what we are trying  
24 to --

25           THE COURT: He is at the office, right?

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1 MS. PINERA-VAZQUEZ: He is at the office.

2 MS. MACE: I see.

3 THE COURT: He's, like, the case manager.

4 MS. MACE: I see.

5 MS. PINERA-VAZQUEZ: Right. He's a case agent.

6 THE COURT: Yes, I understand. Okay, so are we all  
7 clear on that?

8 MS. PINERA-VAZQUEZ: Yes. We will work on the  
9 details with them.

10 THE COURT: Okay. So I feel comfortable that any  
11 gaps in the GPS would be filled by this arrangement. Okay,  
12 anything else I have missed?

13 MS. MACE: I don't think so, Your Honor.

14 MS. PINERA-VAZQUEZ: Let me, can we ask Ms. Becerra.

15 THE COURT: Absolutely.

16 MS. PINERA-VAZQUEZ: Ms. Becerra, Jackie?

17 MS. BECERRA (telephonically): Yes, we are still  
18 here.

19 MS. PINERA-VAZQUEZ: Is there anything else that you  
20 feel that we have missed that you need to add?

21 MS. BECERRA: No. I'm fine, thank you.

22 THE COURT: And do you think this is a workable  
23 arrangement?

24 MS. BECERRA: I do, Your Honor. I am here. I was  
25 with Mr. Napout and his wife. We went with Pretrial Services



1 and with Mr. Velasquez (ph), Tony, to make sure everybody  
2 understands and that things are all reported, but it does  
3 afford him much more movement hopefully in the premises.

4 THE COURT: Yes, I think it will. And I think  
5 that's it, unless anybody has anything to add.

6 MR. PAPPALARDO: I think we are fine, Your Honor.

7 MS. MACE: Thank you, Your Honor.

8 MS. PINERA-VAZQUEZ: Thank you for your time, Judge.  
9 (Discussion held off the record.)

10 THE COURT: One more thing on the record. What do  
11 we need in writing for Pretrial Services to make this --

12 PRETRIAL OFFICER ILARIA: Your Honor, I think it's  
13 okay there has been an order. You have made the verbal order.

14 THE COURT: You are fine with that?

15 PRETRIAL OFFICER ILARIA: I think that's sufficient,  
16 yes.

17 THE COURT: No, but if you need anything in writing,  
18 you should let me know.

19 PRETRIAL OFFICER ILARIA: Okay.

20 MS. MACE: Thank you, Your Honor.

21 THE COURT: Thanks.

22 (Discussion held off the record.)

23 THE COURT: Just to provide some context, defense  
24 counsel provided me a copy of a medical report and asked to  
25 put certain conditions on it. I don't have those conditions

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1 in front of me, but essentially I didn't share it with  
2 anybody. Now they are asking for it to be submitted to the  
3 Court or returned to them. And I believe Mr. Ilaria was not  
4 provided a copy of that; is that correct?

5 PRETRIAL OFFICER ILARIA: Your Honor --

6 MS. PINERA-VAZQUEZ: He has one.

7 PRETRIAL OFFICER ILARIA: I do have.

8 THE COURT: And the Court has a copy as well.

9 MS. MACE: So just to be clear for the record, I  
10 will now do with this whatever defense counsel asks that I do.

11 MS. PINERA-VAZQUEZ: We will take it back. Thank  
12 you.

13 MS. MACE: Done (handing).

14 THE COURT: You want the Court to keep it in case  
15 this issue comes up again?

16 MS. PINERA-VAZQUEZ: Yes, we appreciate it. You can  
17 keep it under seal.

18 THE COURT: File it under seal?

19 MS. PINERA-VAZQUEZ: Yes.

20 MS. MACE: That's fine.

21 THE COURT: Okay, we will do that.

22 MS. PINERA-VAZQUEZ: Judge, may we keep the Pretrial  
23 Services report? Can we keep our copy in our files?

24 THE COURT: Yes.

25 MS. MACE: No.

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1 MS. PINERA-VAZQUEZ: I'm sorry?

2 MS. MACE: No, in this district, they don't allow  
3 any of the parties to keep them.

4 THE COURT: I have been allowing it.

5 PRETRIAL OFFICER ILARIA: That's fine, Your Honor.

6 THE COURT: I do allow it.

7 MS. PINERA-VAZQUEZ: Thank you, Judge.

8 MS. MACE: May I keep mine as well?

9 THE COURT: Yes.

10 MS. MACE: Thank you.

11 THE COURT: Because if this issue comes up again, I  
12 don't want you to have to go back and bother Mr. Ilaria.

13 Okay, we are done.

14 (Time noted: 12:59 p.m.)

15 (Proceedings adjourned as set forth above.)  
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R E P O R T E R C E R T I F I C A T E

I, JOSHUA B. EDWARDS, RDR, CRR, hereby certify that:

(A) the foregoing pages represent an accurate and complete transcription of the entire record of the proceeding before the United States District Court for the Eastern District of New York, The Honorable Robert M. Levy, United States Magistrate Judge presiding, in the matter of The United States of America v. Juan Napout, index number 15-CR-00252, held February 25, 2016, and (b) these pages constitute the original transcript of the proceeding.

This transcript certification is void if the signature is not originally signed by the court reporter who reported this matter.



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